



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA FACSIMILE AND FIRST CLASS MAIL
(732) 792-1999

Michael Maloney
Business Manager
Plumbers and Pipefitters Local
Union No. 9
2 Iron Ore Road at Route 33
Englishtown, New Jersey 07726

MAR 30 2017

RE: MUR 7028
Plumbers and Pipefitters Local
Union No. 9 *et al.*

Dear Mr. Maloney:

On July 20, 2017, you, as the Business Manager of Plumbers and Pipefitters Local Union No. 9, was notified of complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you client at that time.

Upon review of the available information, the Commission, on March 21, 2017, found that there is reason to believe that Plumbers and Pipefitters Local Union No. 9 violated 52 U.S.C. § 30118(b)(3)(A)-(C) (formerly 2 U.S.C. § 441b(b)(3)(A)-(C)) and 11 C.F.R. § 114.5(a)(2)-(5). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1618 or khart@fec.gov.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosure
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the FECA to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. 52 U.S.C. § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **MUR:** 7028

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7 **RESPONDENTS:** Plumbers and Pipefitters Local Union No. 9.
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9 Plumbers and Pipefitters Local Union No. 9.
10 Political Action Committee and Michael Maloney
11 in his official capacity as treasurer
12
13 Plumbers and Pipefitters Local Union No. 9.
14 Industry Advancement Fund
15

16 **I. INTRODUCTION**

17 Complainant Rupert Baptiste ("Baptiste") alleges that Plumbers & Pipefitters Local
18 Union No. 9 ("Union"), its separate segregated fund, the Plumbers and Pipefitters Local Union
19 No. 9 Political Action Committee ("PAC"),¹ and two other entities affiliated with the Union, the
20 Industry Advancement Fund ("IAF") and the Benevolency Fund ("BF"), improperly deducted
21 funds from his pay without authorization. Complainant also alleges that despite his written
22 request for a refund of \$7,702.70 for various unauthorized deductions between 2014 and 2015,
23 Respondents have failed to issue the refund.

24 Respondents do not state or provide any documentation demonstrating that they obtained
25 Baptiste's authorization to deduct funds for PAC contributions. Respondents state only that they
26 reimbursed any union member who opted out of voluntary contributions to the PAC or other

¹ The PAC's latest Amended Statement of Organization reflects that it is a separate segregated fund connected to the Union and affiliated with a labor organization named the United Association of Political Education Committee (United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada) ("UAPEC"). See Amended Statement of Organization, Plumbers and Pipefitters Local Union 9 PAC (Oct. 13, 2016); Amended Statement of Organization, UAPEC (May 9, 2014). Further, a review of the PAC's disclosure reports reflect that it made contributions to federal candidates and committees in 2014 and 2015. See e.g., October 2014 Quarterly Report, Plumbers and Pipefitters Local Union No. 9 (Oct. 6, 2014); 2015 Mid-Year Report, Plumbers and Pipefitters Local Union No. 9 PAC (July 6, 2015).

- 1 funds in writing, and that they so informed Baptiste on several occasions. Respondents also
2 deny receiving Baptiste's refund request before the complaint's filing.

3 Because the available information suggests that the Union may be using a reverse check-
4 off system for its PAC contributions with regard to Baptiste and other union members, we find
5 reason to believe that the Union and the PAC violated the Act and Commission regulations.²

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. Facts**

8 Complainant, who has been a member of the Union since 1997, alleges that deductions
9 totaling \$7,702.70 were taken from his pay for contributions to various funds in 2014 and 2015,
10 including what he termed "Target," "PAC," and "Benevolent" funds.³ The contributions made to
11 the PAC from Baptiste's payroll deductions during 2014 and 2015 total \$1,485.95. A review of
12 the PAC's disclosure reports indicates that Baptiste has regularly contributed to the PAC since he
13 transferred his membership to the Union in 1997, and he continued to make PAC contributions in
14 2016.⁴

² As to the payroll deductions used as contributions to the IAF and BF, we make no findings due to the Commission's apparent lack of jurisdiction over this activity. Neither fund is registered as a political committee with the Commission, nor do they appear to have engaged in activity that would meet the definition of a political committee under the Act, and the available information suggests that the purpose of these two funds is unrelated to influencing federal elections. See Response (Apr. 4, 2016), Attach. at 8-10; 54-94. See also 11 C.F.R. § 102.1(c) (funds established solely for the purpose of financing political activity in connection with state or local elections need not file Statements of Organization with Commission). The Commission database does not reflect any contributions or disbursements made by either entity in connection with any federal elections.

³ Although Baptiste refers to a "Target" fund in the Complaint, the available information suggests that the Target Fund is the IAF fund. The Complaint contains a chart reflecting the following amounts allegedly deducted as contributions: Year 2014 - \$2,516 (Target,) \$754.80 (PAC) and \$880.60 (Benevolent); Year 2015 - \$2,089 (Target), \$731.15 (PAC) and \$731.15 (Benevolent). See Compl., Attach. Also attached to the complaint is a letter from Baptiste's counsel to his employer (Furino and Sons, Inc.) requesting the refund of the same contributions and requesting that the employer provide evidence of authorization to deduct those funds. See *id.*, Attach. (Ltr. from Stacy A. Santola, Esq. to Furino & Sons, Inc. (Feb. 3, 2016)). The Complaint also contains copies of Baptiste's pay stubs and notations of the different deductions. *Id.*

⁴ See e.g., July 2016 Quarterly Report, Plumbers and Pipefitters Local Union No. 9 PAC (July 8, 2016); 2015 Mid-Year Report, Plumbers and Pipefitters Local Union No. 9 PAC (July 2, 2015); July 2014 Quarterly Report,

1 The Union's initial response denied receiving Baptiste's request for a refund of
2 contributions made to the PAC, IAF, and BF and instead asserts that it would have honored his
3 request had it been received.⁵ A joint response (Resp. #2) submitted on behalf of the Union, the
4 PAC, and the IAF fund similarly denies that the Union received Baptiste's refund request and
5 asserts that the Union would have honored the request as it had done in the past for other union
6 members.⁶ This Response further states that, given the pending status of the Complaint, it would
7 provide reimbursement to Baptiste in "a manner satisfactory to the Commission."⁷ The
8 responses do not state that PAC deductions were made in accordance with Baptiste's voluntary
9 authorization.

10 **B. Analysis**

11 Under the Federal Election Campaign Act of 1971, as amended (the "Act") and the
12 Commission's regulations, labor organizations are prohibited from making contributions in
13 connection with a federal election (other than to independent- expenditure only political
14 committees and hybrid political committees),⁸ and a political committee is prohibited from

Plumbers and Pipefitters Local Union No. 9 PAC (July 10, 2014). The Complaint does not indicate why Baptiste alleges unauthorized deductions only for 2014 and 2015 when his PAC contributions date back to 1998.

⁵ Resp., generally (Apr. 4, 2016). The Response also provides a variety of documents regarding Baptiste, the majority of which are unrelated to the complaint allegations, except for a copy of the Union's Collective Bargaining Agreement (CBA) and a copy of a union resolution establishing the IAF. *Id.*, Attach. at 8-10; 54-94. Articles XXVIII and XXIX of the CBA state, in pertinent part, that the IAF and Benevolence funds will be deducted from the employee's net pay, maintained in a separate segregated account in conformity with state and federal law, and that the employee's check-off authorization should be voluntarily given by the employee without coercion by the Union. *Id.*

⁶ Resp. #2 at 1 (Sept. 6, 2016).

⁷ Resp. #2 at 1-2.

⁸ See, e.g., Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011).

1 knowingly accepting or receiving such contributions.⁹ Labor organizations are permitted to
2 establish and solicit political contributions to an SSF.¹⁰ A labor organization or its SSF may only
3 solicit contributions from the organization's members and executive or administrative personnel,
4 and their families.¹¹

5 An SSF is prohibited from making contributions or expenditures "by utilizing money or
6 anything of value secured by physical force, job discrimination, or financial reprisals, or the
7 threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys
8 required as a condition of membership in a labor organization or as a condition of employment
9" ¹² All contributions to an SSF must be voluntary and without coercion.¹³ Further, an SSF
10 is required to report the contributions it receives, including those made via payroll deduction, and
11 it must maintain records for matters required to be reported for three years after the report is
12 filed.¹⁴

13 A labor organization may use a payroll-deduction or check-off system to collect
14 contributions to its SSF.¹⁵ A contributor, however, must affirmatively authorize such payroll
15 deductions from the contributor's wages.¹⁶ A reverse check-off, by which SSF contributions are

⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d).

¹⁰ 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

¹¹ 52 U.S.C. § 30118(b)(4)(A)(ii); 11 C.F.R. § 114.5(g)(2).

¹² 52 U.S.C. § 30118(b)(3)(A); *see also* 11 C.F.R. § 114.5(a)(1).

¹³ 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.5(a); *see also* Advisory Op. 2003-14 at 3 (Home Depot).

¹⁴ 52 U.S.C. § 30104; 11 C.F.R. §§ 104.14(b), 104.8(b), 114.5(e)(3).

¹⁵ *See generally* Advisory Opinion 2013-12 (SEIU and SEIU COPE) at 3.

¹⁶ *See* 11 C.F.R. § 114.2(f)(4)(i). *See also* Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations, 71 Fed. Reg. 38,513 (July 7, 2006). While certain other forms of documentation may serve as proof of payroll documentation authorization, signed payroll deduction forms may serve as the best documentation that a deduction was authorized at a particular time for a particular amount. *See id*

1 deducted from wages unless an employee opts out, is "per se violative of section
2 30118(b)(3)(A)'s prohibition."¹⁷ To ensure that contributions solicited for an SSF are voluntary,
3 the Act and the Commission's regulations make it unlawful for any person to solicit a
4 contribution to an SSF without informing the employee of the political purpose of the SSF and of
5 the right to refuse to contribute to the SSF without reprisal.¹⁸ The term "person" includes a
6 corporation or a labor organization.¹⁹

7 Respondents do not rebut Baptiste's allegation that he did not voluntarily authorize the
8 Union to deduct funds from his pay for the \$1,485.95 in PAC contributions shown on the chart
9 attached to the Complaint. The Respondents also provided no information to demonstrate that
10 they gave Baptiste an opportunity to affirmatively opt for the payroll deductions, as required by
11 the Act. Without information to show that Baptiste voluntarily authorized the deductions and
12 subsequent PAC contributions, we conclude that there is reason to believe that the PAC
13 knowingly accepted contributions totaling \$1,485.95 that were not voluntarily given by Baptiste,
14 nor has it refunded those contributions to Baptiste.

15 Based on the available information, the Commission finds reason to believe that the
16 Plumbers and Pipefitters Local Union No. 9 violated 52 U.S.C. § 30118(b)(3)(A)-(C) and

¹⁷ *FEC v. Nat'l Educ. Ass'n*, 457 F. Supp. 1102, 1110 (D.D.C. 1978); *see also* Advisory Op. 2001-04 (MSDWPAC) (Apr. 19, 2001); *see also* MUR 4351 (UMWA) (the Commission found reason to believe based on the apparent use of a reverse check-off system, but took no further action after the investigation demonstrated that the deductions were not deposited in account used to make federal contributions).

¹⁸ 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4). In addition, if the SSF or connected organization suggests a guideline for contribution amounts, the solicitation must state that the guideline is merely a suggestion, that the member is free to contribute more or less than the guideline suggests, and that the union will not favor or disadvantage anyone because of the amount of the contribution or a decision not to contribute. 11 C.F.R. § 114.5(a)(2), (5). A solicitation can be coercive without the requisite notices. *See* Conciliation Agreement IV.7, MUR 5337 (First Consumers Nat'l Bank) (conciliating prohibited facilitation of national bank contributions to a state SSF).

¹⁹ 52 U.S.C. § 30101(11).

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1 11 C.F.R. § 114.5(a)(2)-(5) by failing to obtain the appropriate voluntary authorization from
2 Baptiste for the payroll deductions. The Commission further finds reason to believe that the
3 Plumbers and Pipefitters Local Union No. 9 Political Action Committee and Michael Maloney in
4 his official capacity as treasurer violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R.
5 § 114.5(a)(2)-(5).